

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(02/24/2004 - 02/27/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-2111 (L), 03-2112  
US v. Charleston Cnty SC  
(Duffy)

VOTING RIGHTS ACT. Whether county's at-large electoral  
system impermissibly dilutes minority voter strength.

03-1256  
Volvo Trucks v. US  
(Bullock)

TAX. Whether manufacturer of heavy trucks was responsible  
for excise taxes on sales where franchise dealers failed to  
meet registration and certification requirements of  
Treasury regulation.

03-1809  
Point PCS, LLC v. Sea Haven Realty  
(Boyle)

CONTRACTS. Challenge to denial of relief from default  
judgment.

03-4332  
US v. William J. Blount  
(Hudson)

CRIMINAL. Propriety of admission of evidence under  
Rule 404(b) and sentence enhancement under USSG Section  
2J1.2(b)(1).

PANEL I  
COURTROOM ONE  
Courthouse Room 435 (Red Carpet)  
9:30 a.m.

TUESDAY, FEBRUARY 24, 2004

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(02/24/2004 - 02/27/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-22 (L), 03-23 03-24  
US v. Breeden  
(Wilson)

CRIMINAL LAW & PROCEDURE. Whether government is barred from seeking the death penalty for allegedly not having filed a timely sub-section 3593(a) notice.

03-6629  
Cothran v. Turner  
(Williams)

HABEAS CORPUS. Whether prosecutor withheld exculpatory materials; whether defendant was denied effective assistance of counsel.

03-4662  
US v. William H. Johnson  
(Chambers)

SENTENCING GUIDELINES. Whether a prior West Virginia conviction for fleeing is excludable from criminal history under USSG Section 4A1.2(c)(1).  
15 mins. per side

PANEL II  
COURTROOM TWO  
Courthouse Room 233 (Green Carpet)  
9:30 a.m.

TUESDAY, FEBRUARY 24, 2004

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(02/24/2004 - 02/27/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-4503

US v. Samuel Tigney  
(Broadwater)

SENTENCING. Whether the district court erred awarding criminal history points for misdemeanor failure to appear convictions.

03-1960

Guilford Co Bd Edu v. City of High Point  
(Beaty)

JURISDICTION. Whether district court erred in retaining supplemental jurisdiction of a state law claim while simultaneously remanding all other state law claims to state court.

03-1936

Stewart v. Coyne Textile Svc  
(Chambers)

SETTLEMENT. Whether district court erred in finding that plaintiff breached the confidentiality provision of an oral settlement agreement.

PANEL III  
COURTROOM THREE  
Courthouse Room 225 (Tan Carpet)  
9:30 a.m.

TUESDAY, FEBRUARY 24, 2004

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(02/24/2004 - 02/27/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-1470  
Nes v. Anne Arundel Cnty  
(Garbis)

LAND USE. Challenge to summary judgment in action alleging  
equal protection violations in county's land development  
application process.

PANEL III  
COURTROOM THREE  
Courthouse Room 225 (Tan Carpet)  
2:00 p.m

TUESDAY, FEBRUARY 24, 2004

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(02/24/2004 - 02/27/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

02-7918  
US v. Ralph Leon Terry  
(Currie)

HABEAS CORPUS. Whether counsel was ineffective for advising defendant not to testify and failing to call witnesses.

03-1316  
Bryan v. BellSouth Commun Inc  
(Bullock)

UNFAIR TRADE PRACTICES. Whether claim that telephone company failed to disclose information relating to Federal Universal Service Charge challenges a federal tariff and is barred by the "filed-rate" doctrine.

03-1771  
US v. Scott D. Field  
(Davis)

BANKRUPTCY. Whether trustee was entitled to recover as a fraudulent conveyance payments to the IRS made by an officer of the corporate debtor for his personal tax obligations.

PANEL IV  
COURTROOM FOUR  
Courthouse Room 420 (Tweed Carpet)  
9:30 a.m.

TUESDAY, FEBRUARY 24, 2004

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(02/24/2004 - 02/27/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-1675 American Chiropracti v. Trigon Healthcare (Jones)	ANTITRUST. Challenge to dismissal and summary judgment in action by chiropractors against health insurers alleging conspiracy, tortious interference, breach of contract, RICO violations, and violation of state insurance laws.
03-1924 In the Matter of v. Johnson (Chambers)	ADMIRALTY. Challenge to dismissal for lack of jurisdiction under Limitation of Liability Act and the Admiralty Extension Act.
03-1808 Wilkinson v. Rumsfeld (Friedman)	CIVIL. Whether the defense of failure to exhaust administrative remedies is waived if not raised during administrative proceedings, as discussed in Ester v. Principi, 250 F.3d 1068 (7th Cir. 2001).
03-1651 Bethenergy Mines Inc v. David L. Cunningham	BLACK LUNG BENEFITS. Whether Cunningham's claim for benefits was timely filed; whether the ALJ's decision awarding benefits is supported by substantial evidence.

PANEL V  
COURTROOM FIVE  
Courthouse Annex Room 229  
9:30 a.m.

TUESDAY, FEBRUARY 24, 2004

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(02/24/2004 - 02/27/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-18  
Bailey v. True  
(Lee)

HABEAS CORPUS. Numerous issues arising out of state capital murder conviction and sentencing.

02-6711  
US v. Francisco M. Sosa  
(Thornburg)

HABEAS CORPUS. Whether a certificate of appealability is necessary to vacate and remand under Hill v. Braxton, 277 F.3d 701 (4th Cir. 2002).

03-2095  
McCormack v. Computer Sciences  
(Currie)

ERISA. Challenge to district court's interpretation of severance pay plan.

03-4508 (L), 04-4008  
US v. Robert Graham  
(Williams)

CRIMINAL. Whether search warrant was supported by probable cause and, if not, whether good faith exception should apply to its execution.

PANEL I  
COURTROOM ONE  
Courthouse Room 435 (Red Carpet)  
9:30 a.m.

WEDNESDAY, FEBRUARY 25, 2004

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(02/24/2004 - 02/27/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-1648  
EEOC v. Warfield-Rohr Casket  
(Nickerson)

ADEA. Challenge to summary judgment in employment termination action where age was allegedly a factor in discharge.

03-1827 (L), 03-1898  
IVS Hydro Inc v. Robinson  
(Goodwin)

UNFAIR TRADE PRACTICES. Challenge to summary judgment in action alleging conspiracy in restraint of trade, misappropriation of trade secrets and tortious interference with contract; attorney fees.

03-1971  
Consolidation Coal v. Swiger

BLACK LUNG BENEFITS. Whether ALJ properly denied review of claimant's Part B claim; whether claimant requested modification of 1993 denial of benefits; whether award of benefits is supported by substantial evidence. 15 mins. per side

PANEL II  
COURTROOM TWO  
Courthouse Room 233 (Green Carpet)  
9:30 a.m.

WEDNESDAY, FEBRUARY 25, 2004



UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(02/24/2004 - 02/27/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-1831  
Clem v. Corbeau  
(Ellis)

CIVIL RIGHTS. Challenge to the exclusion of expert testimony and jury instructions in action alleging excessive use of force by police officer.

03-1769  
MD & VA Milk Prod v. Crowell Farms Inc  
(Brinkema)

CONTRACTS. Whether milk cooperative could recover damages for adulterated milk sold to it by dairy farm.

03-4536 (L), 03-4537  
US v. Kenneth Haley  
(Haden)

CRIMINAL LAW & PROCEDURE. Whether the 2003 amendment to the reporting provision in 28 U.S.C. Section 994(w) is unconstitutional; sentence enhancement for risk of harm to life or environment, USSG Section 2D1.1(b)(5)(B).

PANEL III  
COURTROOM THREE  
Courthouse Room 225 (Tan Carpet)  
9:30 a.m.

WEDNESDAY, FEBRUARY 25, 2004

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(02/24/2004 - 02/27/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-1966  
Sidwell v. VA Intl Terminals

LONGSHORE BENEFITS. Whether the ALJ correctly determined that Sidwell's employment as union president constituted maritime employment under the LHWCA.

03-1425  
Lewis Coal Company v. DOWCP

BLACK LUNG BENEFITS. Whether the ALJ's decision ordering payment of medical benefits is supported by substantial evidence.  
15 mins. per side

03-1679  
Venkatraman v. REI Systems Inc  
(Ellis)

EMPLOYMENT DISCRIMINATION. Whether American Competitiveness and Workforce Improvement Act contains private right of action; exhaustion; other issues.

03-1612  
Nolte v. Capital One Fin Corp  
(Hilton)

SECURITIES. Challenge to dismissal of action alleging securities fraud for issuing allegedly false and misleading financial statements.

PANEL IV  
COURTROOM FOUR  
Courthouse Room 420 (Tweed Carpet)  
9:30 a.m.

WEDNESDAY, FEBRUARY 25, 2004

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
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(02/24/2004 - 02/27/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-1559

Aaron C. James v. Booz Allen Hamilton  
(Brinkema)

TITLE VII. Whether summary judgment properly granted in  
action alleging race discrimination in employment.

03-4737 (L), 03-4752

US v. William T. Cross  
(Smith)

CRIMINAL PROCEDURE. Challenge to sufficiency of the  
evidence; challenge to sentencing using an  
accessory-after-the-fact analysis.

02-2251

Sterling Acceptance v. Tommark Incorporated  
(Harvey)

TRADEMARK. Challenge to summary judgment on the grounds of  
no likelihood of confusion and the doctrine of laches.

PANEL V  
COURTROOM FIVE  
Courthouse Annex Room 229  
9:30 a.m.

WEDNESDAY, FEBRUARY 25, 2004

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
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NUMBER AND STYLE

NATURE OF CASE

03-1987

Hugger v. Rutherford Institute  
(Horn)

DEFAMATION. Whether public school teachers and principal are "public officials"; whether defendants acted with actual malice.

03-1706

Howard v. Valley Camp Coal Co

BLACK LUNG BENEFITS. Whether BRB erred in concluding collateral estoppel did not apply; whether ALJ's decision denying benefits is supported by substantial evidence.

03-1926

Estate of Perry Week v. Advance Stores Co  
(Wilson)

ERISA. Challenge to summary judgment in action alleging plan administrator's failure to inform beneficiary in writing of continuation rights and verbally misinforming beneficiary of termination of benefits.

03-1457 (L), 03-1543

Auto Owners Ins Co v. Whitewood Properties  
(Britt)

INSURANCE. Whether pollution exclusion clause in policies applied to underlying claims; whether products-completed operations coverage overrides the pollution exclusion provision.

PANEL I  
COURTROOM ONE  
Courthouse Room 435 (Red Carpet)  
9:30 a.m.

THURSDAY, FEBRUARY 26, 2004

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(02/24/2004 - 02/27/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-1637 Rohan v. Networks Present (Motz)	AMERICANS WITH DISABILITIES ACT. Propriety of summary judgment in favor of employer on claims of wrongful discharge under ADA and breach of contract.
03-2005 Laird v. Redwood Trust LLC (Motz)	ADA. Whether restaurant is entitled to "elevator exemption" under the Act.
03-1628 Williams v. Giant Food Inc (Messitte)	TITLE VII. Whether district court erred by not applying continuing violation theory and by denying discovery; other issues.
03-1507 Rich v. Montgomery Cnty MD (Garbis)	CONSTITUTIONAL LAW. Propriety of the district court's grant of summary judgment on First and Fourth Amendment claims, as well as a conspiracy claim under 42 U. S. C. Section 1985 (2000).

PANEL II  
COURTROOM TWO  
Courthouse Room 233 (Green Carpet)  
9:30 a.m.

THURSDAY, FEBRUARY 26, 2004

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
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(02/24/2004 - 02/27/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-1997 Trident Construction v. Austin Co (Norton)	CONTRACTS. Whether verbal agreement to build airplane hangar is a contract for the sale of goods subject to state statute of frauds.
03-4506 US v. Michael A. Thomas (Payne)	CRIMINAL LAW & PROCEDURE. Whether Maryland's statute prohibiting driving under the influence of alcohol substantially conforms to the Virginia statute prohibiting the same conduct.
03-1775 Kennametal Inc v. United Steelworkers (Jones)	LABOR. Challenge to district court's order vacating arbitrator's award sustaining union's grievance under collective bargaining agreement.

REVD 2/25/04

PANEL III  
COURTROOM THREE  
Courthouse Annex Room 345  
9:00 a.m.

THURSDAY, FEBRUARY 26, 2004

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(02/24/2004 - 02/27/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-2245

Wade v. Blue  
(Cook)

FEDERAL JURISDICTION. Whether members of Indian tribe are immune from suit in federal court.

03-1320 (L), 03-2087

Seabulk Offshore Ltd v. Dyn Marine Services  
(Cacheris)

INSURANCE. Challenge to summary judgment in action alleging breach of contract to provide marine insurance coverage.

03-1475

Williams v. UNUM Life Insurance  
(Brinkema)

ERISA. Whether plan administrator abused its discretion in denying disability benefits; other issues.

03-1825

Retired Pilots Assoc v. US Airways Group Inc  
(Brinkema)

BANKRUPTCY. Challenge to corporate distress termination of employee retirement income plan; whether appeal is "equitably moot."

PANEL IV  
COURTROOM FOUR  
Courthouse Room 420 (Tweed Carpet)  
9:30 a.m.

THURSDAY, FEBRUARY 26, 2004

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(02/24/2004 - 02/27/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

00-2287  
Berger v. Ford Motor Company  
(Grimm)

PRODUCT LIABILITY. Challenge to judgment as a matter of law on failure-to-warn claim; challenge to evidentiary rulings.

03-4334  
US v. Franklin Hargrove  
(Friedman)

CRIMINAL. Sufficiency of evidence to support bankruptcy fraud conviction; other issues.

03-1137  
Penn-America Ins Co v. Coffey  
(Smith)

CIVIL. Whether the district court abused its discretion in declining to exercise jurisdiction over a declaratory judgment action based on the absention doctrine.

PANEL V  
COURTROOM FIVE  
Courthouse Annex Room 229  
9:30 a.m.

THURSDAY, FEBRUARY 26, 2004



UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(02/24/2004 - 02/27/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

02-4984

US v. Jaron Reevey  
(Smalkin)

CRIMINAL LAW & PROCEDURE. Was enhancement under U.S. Sentencing Guidelines Manual Section 2B3.1(b)(2)(F) (2001) permissible when defendant was convicted and sentenced under 18 U.S.C. Section 924(c) (2000); other issues.

02-4844

US v. Agnes Holbrook  
(Jones)

CRIMINAL LAW & PROCEDURE. Whether Holbrook's motion to withdraw her guilty plea voided the government's obligations under the plea agreement when the district court found Holbrook bound by her agreement.

03-4193

US v. Michael Farrow  
(Bullock)

EX POST FACTO. Whether application to defendant of the 1995 amendment to North Carolina's firearms prohibition statute violates the Ex Post Facto Clause.

PANEL I  
COURTROOM ONE  
Courthouse Room 435 (Red Carpet)  
8:30 a.m.

FRIDAY, FEBRUARY 27, 2004

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(02/24/2004 - 02/27/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-4428  
US v. William H. Farmer  
(Currie)

CRIMINAL TRADEMARK. Whether indictment sufficiently alleged trademark violation; whether probable cause supported search warrant.

02-1764  
Consolidation Coal v. DOWCP

BLACK LUNG. Whether deceased miner suffered from pneumoconiosis and whether pneumoconiosis caused the miner's death.

03-4044  
US v. Barrington Isaacs  
(Norton)

CRIMINAL LAW & PROCEDURE. Whether the district court erred in amending appellant's written criminal judgment pursuant to Rule 36 to incorporate a previously signed order of forfeiture.

02-4863 (L), 02-4864  
US v. Lee Ann Demus  
(Keeley)

SENTENCING. Whether denial of defendant's right to allocution constituted plain error; other issues.

PANEL II  
COURTROOM TWO  
Courthouse Room 233 (Green Carpet)  
8:30 a.m.

FRIDAY, FEBRUARY 27, 2004

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(02/24/2004 - 02/27/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

02-4091

US v. Peter Kay Stern  
(Thornburg)

SENTENCING GUIDELINES. Whether the district court erred in imposing a six-level enhancement pursuant to U. S. Sentencing Guidelines Manual Section 2A6.1(b)(1); other issues.

03-1859

Aqualine Associates v. Genesis Health  
(Garbis)

BANKRUPTCY. Whether bankruptcy discharged claims of alleged pre-petition tortious interference with economic relations, conspiracy, and fraud and misrepresentation.

03-1629

Gariety v. Thornton  
(Faber)

SECURITIES. Challenge to class certification in action alleging securities law violations, fraud, negligent misrepresentation, aiding and abetting tortious conduct, and conspiracy.

PANEL III  
COURTROOM THREE  
Courthouse Room 225 (Tan Carpet)  
8:30 a.m.

FRIDAY, FEBRUARY 27, 2004

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(02/24/2004 - 02/27/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-4195  
US v. Cornell D. Friend  
(Keeley)

CRIMINAL LAW & PROCEDURE. Whether government breached  
promise not to pursue obstruction of justice enhancement.

03-1674  
Studio Frames LTD. v. Standard Fire Ins Co  
(Tilley)

INSURANCE. Challenge to summary judgment in action seeking  
to recover loss of leasehold improvements and marketing  
materials under the National Flood Insurance Program.

03-4650  
US v. Alfred Smith  
(Morgan)

CRIMINAL LAW & PROCEDURE. Whether stealing and converting  
government property in violation of 18 U.S.C. Section 641  
is a continuing offense.

03-4420  
US v. Rodney W Robinson  
(Britt)

SENTENCING. Whether the government may proceed by proffer  
during a revocation of supervised release proceeding to  
establish the elements of a Grade A violation.

PANEL IV  
COURTROOM FOUR  
Courthouse Room 420 (Tweed Carpet)  
8:30 a.m.

FRIDAY, FEBRUARY 27, 2004